

# State of South Dakota

EIGHTY-FIRST SESSION  
LEGISLATIVE ASSEMBLY, 2006

336M0198

HOUSE AGRICULTURE AND NATURAL RESOURCES

COMMITTEE ENGROSSED NO. **HB 1096** -

02/09/2006

Introduced by: Representative Deadrick and Senator Bogue

1 FOR AN ACT ENTITLED, An Act to regulate access to and use of natural nonmeandered lakes  
2 and to provide certain penalties.

3 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF SOUTH DAKOTA:

4 Section 1. The Legislature finds that the South Dakota Supreme Court, in the case of Parks  
5 v. Cooper, 2004 SD 27 (filed February 25, 2004), held that the Legislature, rather than the  
6 courts, has an obligation to determine the extent of the public's right to use natural  
7 nonmeandered bodies of water held in trust for the public by the state.

8 Section 2. Nothing in this Act limits or changes the authority granted in titles 46 and 46A  
9 to the Water Management Board or the Department of Environment and Natural Resources to  
10 appropriate and regulate beneficial uses of water in any natural nonmeandered lake or to protect  
11 water quality as authorized in Title 34A.

12 Section 3. Nothing in this Act limits or changes the authority granted in Titles 41 and 42 to  
13 the Game, Fish and Parks Commission or the Department of Game, Fish and Parks to regulate  
14 fishing, hunting, trapping, boating, or other public use activities.

15 Section 4. Except as provided in sections 5 to 7, inclusive, of this Act, no person may use



1 any natural nonmeandered lake overlying privately-owned property for any recreational use.  
2 A violation of this section is a Class 2 misdemeanor.

3 Section 5. Irrespective of the ownership of the lake bed or navigability of the water, any  
4 person has access to and may use any natural nonmeandered lake for any lawful recreational  
5 purpose under the following conditions:

6 (1) If the natural nonmeandered lake is designated for public recreational use pursuant  
7 to section 6 of this Act, the person may use any portion of the lake for any lawful  
8 recreational use;

9 (2) If the person has obtained permission from the owner or lessee of the property  
10 underlying any portion of any natural nonmeandered lake that would otherwise be  
11 restricted under the provisions of this Act, the person may use that portion of the lake  
12 for lawful recreational purposes as limited by the scope of the owner's or lessee's  
13 permission; or

14 (3) If the person gains access to the natural nonmeandered lake as provided in section 8  
15 of this Act, the person's recreational use of the lake is restricted as provided in section  
16 8 of this Act.

17 Section 6. The Game, Fish and Parks Commission shall create and publish by rules  
18 promulgated pursuant to chapter 1-26 a list of natural nonmeandered lakes to which the public  
19 has access and may use for all recreational purposes. The list shall designate any natural  
20 nonmeandered lake for such public access and use if the lake has been used by the public for  
21 recreational purposes for at least twenty-one consecutive years in an open, obvious, and adverse  
22 fashion and if the lake satisfies the following criteria:

23 (1) The natural nonmeandered lake is contiguous with a meandered body of water; or

24 (2) The natural nonmeandered lake has a well-established bed and shoreline that

1 historically have been capable of holding various levels of water; the area of the lake  
2 is twenty-five acres or larger; lawful public access to the lake exists via  
3 publicly-owned land or a public right-of-way or section line; public recreational use  
4 benefits exist such as boating, swimming, trapping, fishing, or hunting; and  
5 establishing recreational use will not impair water rights established in § 46-2A-9.

6 The commission may add a lake to or remove a lake from the list of lakes depending on the  
7 commission's determination of whether or not the lake meets the criteria specified in this  
8 section. The commission shall review the list promulgated under this section once every two  
9 years. The commission may only add lakes to or remove lakes from the list during the two-year  
10 periodic review of the list required by this section.

11 Section 7. If a natural nonmeandered lake is not included on the list established in section  
12 6 of this Act and is accessible for recreational use via a public roadway, public right-of-way, or  
13 other lawful point of public access, all contiguous waters of that lake are open for recreational  
14 use unless the owner or any other person legally in possession of the private property under the  
15 water provides markings to restrict recreational use of the water overlying the private property.  
16 The property owner shall file a notice with the Game, Fish and Parks Commission verifying that  
17 the area was marked in accordance with rules promulgated pursuant to this section and  
18 identifying the restricted areas. Any unauthorized recreational use of water overlying private  
19 property that is properly marked pursuant to this section is a Class 2 misdemeanor. If the water  
20 is not properly marked in accordance with this section, the water is open for recreational use.  
21 The Game, Fish and Parks Commission shall promulgate rules pursuant to chapter 1-26 to  
22 specify methods, criteria, and standards for markings to restrict recreational use of water under  
23 this section; procedures for filing notice with the commission of the marking of an area under  
24 this section; procedures pertaining to review by the Department of Game, Fish and Parks of

1 markers placed under this section; and procedures governing the resolution of disputes under  
2 section 8 of this Act. Nothing in this Act prohibits shore fishing of any natural nonmeandered  
3 lake from any public roadway or right-of-way unless otherwise prohibited by law.

4 Section 8. Any person may request the Department of Game, Fish and Parks to review the  
5 placement of property markers for compliance with the provisions of section 7 of this Act. If the  
6 Department of Game, Fish and Parks cannot resolve a dispute related to the placement of such  
7 property markers, the dispute shall be presented to the Game, Fish and Parks Commission for  
8 resolution using the contested case procedures provided in chapter 1-26. Final determinations  
9 of the commission may be appealed as provided in chapter 1-26. Nothing in this section limits  
10 the right of any property owner to mark the owner's property or the water overlying the property  
11 if the marking complies with the provisions of section 8 of this Act.

12 Section 9. The provisions of § 43-17-2 pertaining to the public highway around the  
13 perimeter of any navigable lake do not apply to any natural nonmeandered lake.

14 Section 10. Incidental contact with private land underlying any natural nonmeandered lake  
15 open to public recreational use is not a trespass if the underlying land is not within an area that  
16 is marked and restricted pursuant to section 7 of this Act. Such incidental contact includes  
17 contact between the land and such things as anchors, fishing tackle, foot contact, or other  
18 contact associated with an otherwise legal activity. Contact with private land in an area  
19 restricted pursuant to section 7 of this Act that results from shore fishing activities conducted  
20 from a public roadway or right-of-way and that solely involves contact by fishing tackle or  
21 similar items is not a trespass. Contact with private land underlying any natural nonmeandered  
22 lake that results from use of the lake for transportation purposes is not a trespass. Any user of  
23 a natural nonmeandered lake may be held liable for damage caused to private property as  
24 provided for in Title 21.

1       Section 11. Nothing in this Act limits or changes the prohibition in § 41-9-1.4 against  
2   discharging a firearm while on that portion of public waters that inundate privately-owned  
3   property from a location which is within six hundred sixty feet of an occupied dwelling, church,  
4   schoolhouse, or livestock being held in a confined area according to standard animal husbandry  
5   practices.

6       Section 12. No person may operate any motorized vehicle or device or any combustion  
7   engine on a natural nonmeandered lake for or in connection with any recreational purpose within  
8   six hundred sixty feet of an occupied dwelling, church, schoolhouse, or livestock being held in  
9   a confined area according to standard animal husbandry practices. A violation of this section is  
10   a Class 2 misdemeanor.

11       Section 13. No person may cut, remove, or in any way tamper with any fence legally  
12   constructed, located, and maintained on private land to gain access for purposes of shore fishing  
13   or to gain access to the lake. A violation of this section is a Class 2 misdemeanor.

14       Section 14. The liability of any landowner owning private land underlying a natural  
15   nonmeandered lake open to public recreational use is limited as provided for in §§ 20-9-12 to  
16   20-9-18, inclusive.

17       Section 15. Nothing in this Act restricts the use of any natural nonmeandered lake for  
18   transportation purposes.

19       Section 16. The Department of Environment and Natural Resources shall submit a written  
20   report to the Legislature during its regular session in 2010 following consultation with and input  
21   from the South Dakota Department of Game, Fish and Parks and other interested persons and  
22   entities. The written report shall include recommendations to the Legislature with respect to  
23   policy and criteria to be considered in designating natural, nonmeandered lakes as open for  
24   public access and recreational use.